

IN THE  
MISSOURI SUPREME COURT

---

---

STATE EX REL.	)	
ROBERT H. MAMMEN,	)	
	)	
Relator,	)	
	)	
vs.	)	No. SC94913
	)	
HONORABLE THOMAS CHAPMAN,	)	
	)	
Respondent.	)	

---

---

APPEAL TO THE MISSOURI SUPREME COURT  
FROM THE CIRCUIT COURT OF  
LIVINGSTON COUNTY, MISSOURI  
FORTY-THIRD JUDICIAL CIRCUIT  
THE HONORABLE THOMAS CHAPMAN, JUDGE

---

---

RELATOR'S REPLY BRIEF

---

---

Samuel Buffaloe, Mo. Bar No. 63736  
Attorney for Relator  
Woodrail Centre  
1000 West Nifong  
Building 7 Suite 100  
Columbia, Missouri 65203  
(573) 777-9977  
Fax (573) 777-9974  
Email: Sam.Buffaloe@mspd.mo.gov

## **INDEX**

	<u>Page</u>
TABLE OF AUTHORITIES.....	3
JURISDICTIONAL STATEMENT .....	4
STATEMENT OF FACTS .....	4
ARGUMENT.....	5
A.    A writ is appropriate in the present case .....	5
B.    Sections 217.362 and 577.023 are in conflict .....	6
C.    Section 217.362 controls because it is the more specific statute, and section 577.023 does not repeal it in express words or by necessary implication.....	7
CONCLUSION .....	9
CERTIFICATE OF COMPLIANCE .....	10

## **TABLE OF AUTHORITIES**

	<b><u>Page</u></b>
 <b><u>CASES</u></b>	
<i>In re N.D.C.</i> , 229 S.W.3d 602 (Mo. banc 2007) .....	5
<i>State ex rel. Eggers v. Enright</i> , 609 S.W.2d 381 (Mo. banc 1980).....	7
<i>State ex rel. McKittrick v. Carolene Products Co.</i> , 144 S.W.2d 153 (Mo. banc 1940) .....	7
<i>State ex rel. Miller v. Crist</i> , 579 S.W.2d 837 (Mo. App. W.D. 1979) .....	7
<i>State ex rel. Nixon v. Overmyer</i> , 189 S.W.3d 711 (Mo. App. W.D. 2006).....	7, 8
<i>State ex rel. Salm v. Mennemeyer</i> , 423 S.W.3d 319 (Mo. App. E.D. 2014) .....	5, 6
<i>State ex rel. Sandknop v. Goldman</i> , 450 S.W.3d 499 (Mo. App. E.D. 2014) .....	5, 6
 <b><u>STATUTES</u></b>	
Section 217.362 .....	5, 6, 7, 8
Section 217.827 .....	8
Section 577.023 .....	5, 6, 7, 8

### **JURISDICTIONAL STATEMENT**

Relator adopts the Jurisdictional Statement from his initial brief.

### **STATEMENT OF FACTS**

Relator adopts the Statement of Facts from his initial brief.

## ARGUMENT

### **A. A writ is appropriate in the present case**

Respondent argues that Mr. Mammen's petition for a writ of mandamus should be denied because he "fails to demonstrate a clear and unequivocal right to relief." (Rsp. Brf. 3). However, Mr. Mammen is asking for the exact same relief already given to the relators in *State ex rel. Salm v. Mennemeyer*, 423 S.W.3d 319, 321 (Mo. App. E.D. 2014) and *State ex rel. Sandknop v. Goldman*, 450 S.W.3d 499, 502 (Mo. App. E.D. 2014). Therefore a writ is appropriate in the present case.

It is true that unlike the defendant in *Salm*, Mr. Mammen was sentenced as a chronic offender. Therefore, as part of Mr. Mammen's petition, he is asking this Court to determine that the release provisions mandated by section 217.362 control over the conflicting release provisions mandated by section 577.023. A writ of mandamus is an appropriate remedy here because there is no other way to resolve this conflict. This Court has stated that a writ is appropriate where there is an "important question of law decided erroneously that would otherwise escape review." *In re N.D.C.*, 229 S.W.3d 602, 604 (Mo. banc 2007). Because the question of law in the present case would escape review outside of a writ of mandamus, if this Court finds that section 217.362 is in conflict with section 577.023 and that section 217.362 controls, this Court should grant Mr. Mammen's petition for a writ of mandamus.

**B. Sections 217.362 and 577.023 are in conflict**

As noted in Mr. Mammen's initial brief, the Eastern District Court of Appeals has previously held that under the terms of section 217.362, when a defendant successfully completes the long-term treatment program, the court must either release the defendant on probation or execute the defendant's sentence. *State ex rel. Salm v. Mennemeyer*, 423 S.W.3d 319, 321 (Mo. App. E.D. 2014); *State ex rel. Sandknop v. Goldman*, 450 S.W.3d 499, 502 (Mo. App. E.D. 2014).

Respondent does not argue that the Eastern District misinterpreted section 217.362. In fact, Respondent agrees that in *Salm*, the sentencing court was not authorized under section 217.362 "to reject the Board's probationary release date and set a future probation release date." (Rsp. Brf. 9). It is true, as Respondent notes, that section 577.023.6(4) states that "[n]o chronic offender shall be eligible for parole or probation until he or she has served a minimum of two years imprisonment." (Rsp. Brf. 5).

However, because section 217.362 requires the court to either release the defendant or to execute his or her sentence when he or she has completed the twelve-month long treatment program, and section 577.023.6(4) requires defendants to be imprisoned for at least two years, the two statutes are in conflict.

**C. Section 217.362 controls because it is the more specific statute, and section 577.023 does not repeal it in express words or by necessary implication**

Respondent argues that because section 577.023 was amended after section 217.362 was created, it should control. (Rsp. Brf. 13-15). Respondent further argues that “if the legislature wished to exempt chronic offenders from serving the two-year mandatory minimum imprisonment in cases where the offender successfully completes the long-term program, then it certainly could have amended either statute to exclude the mandatory-minimum requirement.” (Rsp. Brf. 14-15). As previously discussed, if section 577.023 controlled, it would essentially repeal the language from section 217.362 mandating either probation or execution of the defendant’s sentence when he or she completes the long-term treatment program but has been sentenced as a chronic offender.

However, “[a] statute dealing with a subject generally will rarely have the effect of repealing by implication, either wholly or partially, an earlier statute which deals with a narrower subject in a particular way.” *State ex rel. Miller v. Crist*, 579 S.W.2d 837, 838 (Mo. App. W.D. 1979). Furthermore, this Court has stated that “where the general act is later, the special [act] will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication.” *State ex rel. Eggers v. Enright*, 609 S.W.2d 381 (Mo. banc 1980)(citation omitted); *see also State ex rel. McKittrick v. Carolene Products Co.*, 144 S.W.2d 153, 156 (Mo. banc 1940).

Therefore, if section 217.362 is the more specific statute, it should control and act as an exception to section 577.023. The Western District Court of Appeals discussed specific and general statutes in *State ex rel. Nixon v. Overmyer*, 189 S.W.3d 711, 717-18

(Mo. App. W.D. 2006). In that case, the relator argued that exemptions dealing with executions on judgments found in chapter 513 should apply to narrower exceptions listed in the Missouri Incarceration Reimbursement Act (MIRA), section 217.827(1)(b). *Id.* at 717. These exceptions in chapter 513 would have prevented the State from taking the \$1,850 in the relator's bank account. *Id.* MIRA, though, only has exemptions for "the homestead and up to \$2,500 earned while in prison." *Id.* at 718. The Western District determined that the narrower MIRA exemptions should control. *Id.* The Court stated that "MIRA is a more specific statute because it has a more specific purpose." In contrast, the Court found that "[c]hapter 513 provides for the execution of judgments in general rather than any particular judgments." *Id.*

In the present case, section 217.362 serves a more specific purpose than section 577.023.6(4). Section 217.362 creates an alternative to the typical practice of straight probation, prison, and parole. Section 577.023.6(4) is merely listing general requirements for chronic offenders. Section 577.023.6(4) should apply when a defendant is sentenced to prison. Because section 217.362 serves the specific purpose of treating "chronic nonviolent offenders with serious substance abuse addictions," it should control over section 577.023.6(4).

Had the general assembly meant for chronic offenders sentenced under section 217.362 to remain waiting in prison after completing treatment when section 217.362 does not allow for that option, it would have expressly stated this. However, because it does not, the specific statute (section 217.362) should control over the general statute (section 577.023).



## **CONCLUSION**

This Court should issue a permanent writ of mandamus, ordering Respondent to immediately release Mr. Mammen on probation.

Respectfully submitted,

/s/ Samuel Buffaloe

---

Samuel Buffaloe, MO Bar No. 63736  
Attorney for Relator  
Woodrail Centre  
1000 W. Nifong, Building 7, Suite 100  
Columbia, MO 65203  
Tel (573) 777-9977  
Fax (573) 777-9974  
Email: Sam.buffaloe@mspd.mo.gov

**Certificate of Compliance and Service**

I, Samuel E. Buffaloe, hereby certify to the following. The attached brief complies with the limitations contained in Rule 84.06(b). The brief was completed using Microsoft Word, Office 2010, in Times New Roman size 13 point font. Excluding the cover page, the signature block, and this certificate of compliance and service, this reply brief contains 1,224 words, which does not exceed the 7,750 words allowed for a relator's reply brief.

On this 14<sup>th</sup> day of May, 2015, electronic copies of this reply brief were placed for delivery through the Missouri e-Filing System to Caroline Coulter, Assistant Attorney General, at Caroline.Coulter@ago.mo.gov and Adam Warren at mulaw05@yahoo.com.

/s/ Samuel Buffaloe

\_\_\_\_\_  
Samuel Buffaloe, MO Bar No. 63736